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July 1, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: CC Docket No. 95-185 (LEC-CMRS Interconnection)

Dear Mr. Caton:

On Monday, July 1, 1996, the undersigned representing SBC Communications Inc. delivered the accompanying letter and attachment regarding the above-mentioned proceeding to the following Commission staff

Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan P. Ness
Mr. Rudy Baca, Legal Advisor, Commissioner Quello
Ms. Lauren Belvin, Sr. Legal Advisor, Commissioner Quello
Mr. James Casserly, Senior Legal Advisor, Commissioner Ness
Ms. Jackie Chorney, Legal Advisor, Office of the Chairman
Ms. Suzanne Toller, Legal Advisor, Commissioner Chong

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter are being filed with your office. If there are any questions in this regard, please contact me at 202-326-8890.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Bennett", written over a horizontal line.

Michael W. Bennett

Enclosures

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D.T. Hubbard
Senior Vice President

SBC Telecommunications, Inc.
1401 I Street, N.W.
Suite 1100
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Phone 202 326-8836
Fax 202 408-4796



July 1, 1996

Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Re: CC Docket No. 95-185 (LEC-CMRS Interconnection)

Dear Chairman Hundt:

This letter will provide an update regarding developments in the area of LEC to CMRS interconnection and, in particular, to inform the Commission that the first agreement between a LEC and a CMRS provider for mutual compensation and interconnection has been approved by a state commission. In addition, I will address the June 7, 1996 ex parte letter from the Cellular Telecommunications Industry Association ("CTIA") in which a number of erroneous conclusions were drawn regarding the actions which this Commission should take in this docket.

Throughout this docket a number of wireless carriers and, in particular, CTIA have continually argued that wireless carriers lack sufficient bargaining power to obtain interconnection agreements which establish reasonable interconnection rates and reciprocal compensation. SBC has repeatedly stated that this was not the case. More importantly, unlike most wireless carriers in the industry, Southwestern Bell Mobile Systems ("SBMS"), SBC's cellular affiliate, has acted on these convictions and actually entered into negotiations with a number of local exchange carriers.

As SBMS has previously advised this Commission, it has obtained an agreement with Ameritech-Illinois wherein SBMS not only receives mutual compensation, but obtains significantly reduced interconnection fees. These reductions in interconnection fees are phased in during the period from July 1, 1996 through January 1, 1999 at which point SBMS will compensate Ameritech-Illinois for traffic terminated on Ameritech's network at the rate of \$.005 per minute of use for traffic terminated at an end office and \$.0075 per minute of use for traffic

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terminated at a tandem. As noted in the agreement between Ameritech and SBMS, these rates are identical to rates which Ameritech-Illinois will make available to alternative local exchange carriers ("ALEC")

At the same time, Ameritech-Illinois has recently entered into an agreement with MFS under the terms of which MFS and Ameritech will terminate traffic on each other's networks at the rate of \$.009 per minute of use. It is ironic that, at a time when certain members of the wireless industry are suggesting that wireless carriers lack the bargaining power to obtain reasonable interconnection rates and would be treated unfairly when compared to ALECs, SBMS has negotiated an agreement with Ameritech at rates which are significantly below those which an ALEC has accepted.

Once, as a result of the SBMS/Ameritech agreement, it became clear that an interconnection agreement including reciprocal compensation could be obtained by a wireless carrier, certain members of the wireless industry changed direction and began to argue that such an agreement would not be promptly approved by a state commission. Indeed, they argued that the FCC should take action to save the wireless industry from having to deal with the various state commissions. In his letter of June 7, 1996, Mr. Tom Wheeler, the President and Chief Executive Officer of the CTIA, stated that, because the Ameritech/SBMS agreement was submitted to the Illinois Commerce Commission ("ICC"), "the abilities of parties to enter into voluntary interconnection agreements has been jeopardized and the FCC's ability to insure a competitive marketplace through reciprocal and comparably priced LEC-CMRS interconnection agreements has been threatened." Here again, the action of SBMS and, more importantly the ICC, demonstrates the fallacy of these fears

In order to demonstrate how efficiently the process can work, I would like to briefly summarize the dates and actions which resulted in the approval of the SBMS/Ameritech agreement. SBMS' discussions with Ameritech-Illinois began well prior to the passage of the Telecommunications Act of 1996.¹ A final agreement was reached on March 22, 1996 less than two months after the passage

¹ The fact that these negotiations began in 1995 was one factor which lead to the inclusion in the agreement of an acknowledgment by the parties that the agreement was not covered by the Telecommunications Act of 1996. Ameritech agreed that it would simply amend its tariffs and make the agreement effective on that date. As discussed in the text above, as a result of the ICC's prompt action in reviewing and approving this agreement, the agreement will in fact be effective on July 1, 1996 and will now bear the imprimatur of the approval of the ICC as well.

Honorable Reed E. Hundt

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of the Telecommunications Act. An Addendum was executed on April 30, 1996, and in accordance with the ICC's direction, on May 6, 1996, both the Agreement and the Addendum were submitted under Section 252(e) of the Telecommunications Act for the Commission's approval. As noted in the attached ICC Order approving this agreement,

"First, the parties had agreed that the agreement would become effective on July 1 before it became apparent that the Telecommunications Act would require approval of the agreement by the Commission. Second, in conjunction with this agreement, Ameritech filed a tariff which has a July 1, 1996 effective date. The Hearing Examiner set a schedule for the filing of comments and replies which would allow this matter to be considered by the Commission prior to July 1, 1996 in the event that no hearings were required." (See attached ICC Order at p. 1)

A number of parties, including MCI and AT&T Wireless intervened in this matter. An expedited briefing schedule was established, nonevidentiary hearings occurred on May 20, June 10 and 11, and the record was closed at the conclusion of the discussion on June 11, 1996. The Administrative Law Judges submitted their proposed order shortly thereafter and parties were required to submit their exceptions to the proposed order in an expedited fashion. Even though exceptions were filed, the matter was concluded and a proposed order was presented to the Commission on Friday, June 21, 1996. The matter was heard in an ICC open meeting held on Wednesday, June 26, 1996 and unanimously approved by that Commission.

SBC has long believed that actions speak louder than words. The actions of SBMS speak volumes regarding the ability of wireless carriers to obtain reasonable interconnection agreements, including mutual compensation. The actions of the ICC clearly show, despite the contentions to the contrary by CTIA and some wireless carriers, that these agreements can and likely will be approved quickly and efficiently.

It is at best ironic that, at a time when certain parties repeatedly tell the Commission that wireless carriers cannot obtain agreements, the first interconnection agreement filed with any state commission under Section 252 was one for LEC to CMRS interconnection. It is equally ironic that, at a time when certain wireless carriers and organizations are repeatedly telling this Commission that, even if a LEC/CMRS agreement could be reached, approval will be slow in coming, the first interconnection agreement to be approved by a state commission

Honorable Reed E. Hundt

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under Section 252 is one establishing LEC to CMRS interconnection including reciprocal compensation and was achieved in an expedited manner.

It is time for certain wireless carriers and organizations to acknowledge that this Commission need not take any action to protect the wireless industry. The wireless industry needs to take the actions necessary to promote its own interest. As evidenced by the experience of SBMS, Ameritech and the ICC, such actions can and will result in interconnection agreements which foster the competition which this Commission and the Telecommunications Act of 1996 are seeking.

As SBC has stated before, the procedures and processes established as a result of the Commission's general interconnection docket (CC Docket 96-98) should apply to all carriers, including CMRS providers. By these actions the Commission can, as CTIA urged in its June 7 ex parte letter, "... incorporate the leadership of Ameritech and Southwestern Bell in a federal regulatory policy."

Sincerely,

A handwritten signature in black ink, appearing to read "D. T. Hubbard", with a long horizontal line extending to the right.

D. T. Hubbard

Attachment

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameritech Illinois :
: 96 NA-001
Agreement dated March 22, 1996 :
and addendum dated April 30, :
1996 between Ameritech Illinois :
and Southwestern Bell Mobile :
Systems, Inc. d/b/a Cellular :
One-Chicago. :

ORDER

By the Commission:

I. PRELIMINARY MATTERS

On May 6, 1996, Ameritech Illinois ("Ameritech") filed a request for approval of an Agreement dated March 22, 1996, and an addendum dated April 30, 1996, between Ameritech and Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One-Chicago ("Cellular One-Chicago") under Section 252(e) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. 151, et seq.) ("Act"). A statement in support of the request and the Agreement were submitted with the request. On May 17, 1996, Ameritech filed a verification sworn to by David H. Gebhardt, Vice-President, Regulatory, stating that the facts contained in the request for approval are true and correct.

Petitions for leave to intervene were filed on behalf of Cellular One-Chicago, MCI Telecommunications Corporation ("MCI"), and AT&T Wireless Services, Inc. ("AWS"). Ameritech objected to these petitions arguing that intervention is inappropriate in a Section 252(e) filing. Ameritech argued that while some informal role may be appropriate for interested persons who are not parties to the negotiated agreement, formal intervention is unnecessary. These petitions were granted by the Hearing Examiners.

Pursuant to notice, this matter was called for hearing by duly authorized Hearing Examiners of the Commission at its offices in Springfield, Illinois, on May 20 and June 10 and 11, 1996. At the initial hearing, appearances were entered by counsel for Ameritech, Cellular One-Chicago, Staff of the Commission ("Staff"), MCI, AWS, the People of the State of Illinois by the Attorney General, and the Citizens Utility Board. Counsel for Ameritech explained that it is requesting an order of the Commission by July 1, 1996, for two reasons. First, the parties had agreed that the Agreement would become effective on July 1 before it became apparent that the Telecommunications Act would require approval of the Agreement by the Commission. Second, in conjunction with this Agreement, Ameritech filed a tariff which has a July 1, 1996 effective date. The Hearing Examiners set a schedule for the filing of comments and

replies which would allow this matter to be considered by the Commission prior to July 1, 1996, in the event that no hearings were required.

Comments were filed by MCI, AWS, and Cellular One-Chicago. Staff filed the verified statements of Jake E. Jennings and James D. Webber of the Commission's Telecommunications Division and a legal brief. On June 10, 1996, Staff filed an Errata to its legal brief. Reply comments were filed by AWS, Ameritech, and Cellular One-Chicago.

The hearings on June 10 and 11 were used to clarify the positions of the parties. Appearances were entered on behalf of Ameritech, Cellular One-Chicago, Staff, MCI, and AWS. No party requested hearings or objected to a schedule which would allow the Commission to consider this matter prior to July 1, 1996, as requested by Ameritech and Cellular One-Chicago. At the conclusion of the hearing on June 11, 1996, the record was marked "Heard and Taken." A Hearing Examiners' Proposed Order was served on the parties. Briefs on exceptions and replies, as received, have been considered in arriving at the disposition of this docket.

II. SECTION 252 OF THE TELECOMMUNICATIONS ACT

Section 252(a)(1) of the Telecommunications Act allows parties to enter into negotiated agreements regarding requests for interconnection, services or network elements pursuant to Section 251. Ameritech Illinois and Cellular One-Chicago have negotiated such an agreement and submitted it for approval herein.

Section 252(a) of the Act provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission if a State commission fails to carry out its responsibility and Section 252(e)(6) provides that

any party aggrieved by a state commission's determination on a negotiated agreement may bring an action in an appropriate federal district court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved."

Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

III. THE AGREEMENT

Ameritech terminates local telephone calls originating on Cellular One-Chicago's wireless network. Cellular One-Chicago terminates local telephone calls originating on Ameritech's landline network. In Docket No. 94-0096, et al. (Customers First Order, April 7, 1995), the Commission approved reciprocal compensation between Ameritech and alternate local exchange carriers for local calls at the rate of \$0.005 per minute of use for termination at end offices and \$0.0075 per minute of use for termination at tandems.

Ameritech and Cellular One-Chicago have negotiated the Agreement in order to establish a compensation arrangement in which they pay each other for terminating calls. The Agreement establishes a mutual compensation arrangement between Ameritech and Cellular One-Chicago for the completion of intraMSA traffic. The Agreement provides for a transition over a three-year period to interconnection rates which the Commission approved for new local exchange companies ("LECs") in the Customers First proceeding. Ameritech will file revised tariffs at the intervals specified in the Agreement reflecting mutual compensation rates of \$0.0064 per minute effective July 1, 1996; \$0.0059 per minute effective July 1, 1997; \$0.0055 per minute effective July 1, 1998, and \$0.0050 per minute effective July 1, 1999.

A tariff implementing the first step of the transition was filed with the Commission by Ameritech as TRM 266 on March 29, 1996 to be effective July 1, 1996. This submission would modify Ameritech's Radio Common Carrier Access Tariff, Ill. C.C. No. 16. The Commission takes administrative notice of this filing in order to assure consistency between this order and any determination made in TRM 266.

In the event that interconnection rates for the new LECs change in the future, the Agreement provides that these new rates will be charged to Cellular One-Chicago in lieu of the rates specified in the Agreement. Section 8 of the Agreement reserves to Cellular One-Chicago the right to replace this Agreement with more favorable terms which Ameritech might offer to others.

No new rate elements are being introduced in the Agreement, but existing schedules are being restructured. The new rates to be charged to Cellular One-Chicago are lower than existing rates which are found in Ameritech's Type 2 interconnection tariff (Ill. C.C. No. 16).

Pursuant to Section 2.1 of the Agreement, calls that are jointly carried by Ameritech and another facilities-based carrier (including interexchange carriers, independent telephone carriers, alternative exchange carriers of [sic] wireless carriers), which are terminated to Cellular One-Chicago, are not covered by the terms of the Agreement.

IV. POSITIONS OF THE PARTIES

Staff and MCI filed comments, AWS and Cellular One-Chicago filed both comments and replies, and Ameritech filed only a reply. All parties further explained their positions at the hearings.

No party contends that the Agreement is discriminatory on its face or contrary to the public interest. Matters at issue are limited to (1) whether the Agreement itself should be filed or whether the terms of the Agreement should be reduced to tariff language and filed in Ill. C.C. No. 16 (CMRS tariff) and/or Ill. C.C. 21 (exchange access tariff); and (2) the availability of the terms of the Agreement to other telecommunications carriers under Section 252(i).

A. Staff

After reviewing the Agreement, Staff concluded that the Agreement meets the public interest standard of Section 252(e) as long as its exact terms are implemented through a tariff offering. Staff noted that the services affected by the Agreement are and will continue to be provided at rates which exceed their Long Run Service Incremental Cost and provide a contribution toward Ameritech's common costs and residual revenue requirements. Staff further concluded that the Agreement would not hinder the Company's ability to meet its statutory obligations such as the imputation requirements of Section 13-505.1 of the Public Utilities Act (Verified Statement of James D. Webber, pp. 1 & 2).

Concerning the anti-discrimination standard of Section 252(e), Staff took the position that the concept of discrimination should be viewed on the basis of similarly situated carriers in order to prevent carriers that impose costs on the LEC greater than those imposed by the other party to an agreement from claiming that the negotiated agreement is discriminatory. Staff contends that the terms of the Agreement should not be limited to CMRS providers as specified by Ameritech in the Statement in support of request for approval. Staff first recognizes that Section 252(i) applies to "any requesting telecommunications carrier." Staff suggests that this should be read as applying to "similarly situated" telecommunications carriers and defines "similarly situated" in economic terms. A carrier should be deemed to be similarly situated if telecommunications traffic is exchanged between itself and Ameritech for termination on each other's networks and if it imposes costs on Ameritech that are no higher than costs imposed by Cellular One-Chicago. Staff notes that the costs of terminating traffic from both CMRS providers and landline providers to Ameritech are generally the same (Verified Statement of Jake E. Jennings, pp. 2 & 3).

In its comments, Staff took the position that the anti-discrimination requirement of Section 252(e) can be met if Ameritech files a tariff in both its CMRS tariff (Ill. C.C. No. 16) and its exchange access tariff (Ill. C.C. No. 21) setting forth the exact terms of the Agreement. After certain problems inherent in tariffing were addressed at the hearings, counsel for Staff clarified its position. He reiterated that Staff's concerns could be addressed without a tariffing requirement if the order entered in this matter clearly states that the Agreement is not limited to other CMRS providers (Tr. 80-81 and Staff Brief, p. 4). Staff contends that if Ameritech believes that a telecommunications carrier is not able to take under the same terms and conditions of an agreement approved under Section 252(e), then it has the duty to prove up this position in a subsequent proceeding (Tr. 83).

Staff also initially questioned why the Agreement is signed by an officer of an affiliate of Ameritech on behalf of Ameritech instead of by an officer of Ameritech. Ameritech's representations on this point at the hearing satisfied Staff's concerns.

B. Cellular One-Chicago

Cellular One-Chicago emphasizes that under the terms of the Agreement, it will receive a reduction in the level of access charges paid to Ameritech and will, for the first time, be compensated by Ameritech for terminating Ameritech-originated traffic on Cellular One-Chicago's network. Cellular One-Chicago urges the Commission to promptly approve the Agreement so that it can take advantage of these benefits beginning July 1, 1996.

Cellular One-Chicago stresses that the July 1, 1996 implementation date was a material negotiated provision of the Agreement.

Cellular One-Chicago states that the Agreement satisfies the requirements of Section 252(e) of the Act inasmuch as it does not discriminate against a telecommunications carrier not a party to the Agreement and it is consistent with the public interest, convenience and necessity. Cellular One-Chicago maintains that Ameritech's representation that it will make these arrangements available to any CMRS providers operating in Illinois satisfies the first standard (Cellular One-Chicago Comments, p.5). In response to Staff's position that such a limit is inconsistent with Section 252(i), counsel for Cellular One-Chicago took the position that Ameritech must comply with the requirement in Section 252(i) of the Act to make the terms of the Agreement available to any other telecommunications carrier. Counsel further noted that nothing in the Agreement limits application of Section 252(i) and the Commission need not order Ameritech to comply with a provision that it is already obligated to follow (Tr. 51-52).

Concerning the public interest standard, Cellular One-Chicago notes that the Agreement is premised upon previously approved tariffs and orders of the Commission. In particular, the Customers First order indicates that eventually the same rates for inter-exchange access and local usage should apply for termination regardless of the type of originating carrier. The Agreement reflects a transition to a single termination charge for a minute of use without regard to whether it originates on the network of an incumbent LEC, new LEC, a wireless carrier, or another telecommunications carrier (Cellular One-Chicago Comments, p.6).

Cellular One-Chicago does not object to making the terms of the Agreement available to other telecommunications carriers although it identified some practical problems associated with Staff's tariffing proposal. Counsel for Cellular One-Chicago suggested that reducing the terms of the Agreement to tariff language could cause confusion. As an example, he noted the rate changes scheduled to occur over the three-year period and questioned whether these future stepped rate changes would appear in the tariff Staff recommends. Counsel suggested that it might be appropriate for the Commission to direct Ameritech to tariff the entire Agreement and place it in a new section of its tariff to which all future negotiated agreements would be added (Tr. 60-61). A carrier wishing to review existing terms could find all negotiated agreements in one location. Cellular One-Chicago's basic position is that the question of how the Agreement is to be implemented should not delay Commission approval of the Agreement.

C. MCI

MCI emphasizes that the Commission's review of the Agreement is limited to only the criteria set forth in Section 252(a)(2). Due to this limited review, MCI argues that the Commission should not make any findings regarding compliance with the requirements of Sections 251 or 252(d) of the Act by Ameritech or find that the Agreement establishes precedent with regard to Sections 251 or 252(d) requirements or for agreements that may be entered into by Ameritech and other carriers.

MCI does not oppose Commission approval of the Agreement. While MCI submits that the Agreement is not binding on MCI or other carriers not parties to it, MCI does maintain that it and other carriers should be allowed to avail themselves of any or all of the terms and conditions of the Agreement.

D. AWS

AWS stated that it was recently granted Personal Communications Services ("PCS") licenses by the FCC for a broad range of areas in Ameritech's five-state region and that it will soon commence such service in Illinois in competition with cellular carriers such as Cellular One-Chicago and Ameritech Mobile Communications. AWS is generally supportive of the Agreement. It characterizes the Agreement as "a positive step because it moves wireless carrier interconnection arrangements closer to parity with existing arrangements between incumbent LECs and alternative carriers ("CLECs") and accepts the mandate of mutual or reciprocal compensation between landline and wireless carriers." (AWS Comments, p.3). Despite its criticisms of the Agreement, which are discussed below, AWS explicitly states that it does not wish to prevent Cellular One-Chicago from receiving the benefits of the Agreement's lower and reciprocal rates by July 1, 1996 (AWS Reply Comments, p. 2).

AWS criticizes the Agreement for not going far enough to put wireless carriers on equal footing with CLECs. AWS contends that there is no rationale for continuing the discriminatory and anticompetitive treatment of wireless carriers over a three-year transition period. It further argues that the Agreement creates an artificial and unwarranted distinction between the rates charged by Ameritech for mobile-originated calls and rates paid by Ameritech for landline-originated calls. AWS contends that Ameritech has offered no justification for the provisions in the Agreement which contemplate lesser payments by Ameritech for each minute terminated on the wireless system than it receives from the wireless carrier for each minute terminated on the landline system.

AWS requests that the Commission avoid giving any precedential effect to any agreement that may be approved under Section 252(e)(2)(A) of the Act and should avoid any findings as to compliance by Ameritech with the requirements of Section 251 or 252(d) of the Act. AWS wants assurance that approval of the Agreement would not preclude any other carriers from securing other rates and terms for interconnection from Ameritech.

E. Ameritech

Ameritech emphasizes that the grounds for rejection of a negotiated agreement under Section 252(e)(2) are limited to discrimination and public interest concerns. Ameritech contends that the Agreement meets the statutory standard because it neither discriminates against a telecommunications carrier nor a party to the Agreement nor would its implementation be inconsistent with the public interest, convenience and necessity. Ameritech argues that the Commission should not impose any terms and conditions upon its approval of the Agreement.

Ameritech objects to Staff's recommendation that it file a tariff in both its CMRS (Ill. C.C. No. 16) and exchange access (Ill. C.C. No. 21) tariffs. Ameritech argues that it would be inappropriate to include in its tariffs the amounts which it will pay to Cellular One-Chicago which it cannot "offer" to other carriers. Furthermore, Ameritech points out that the Act does not require the filing of tariffs to contain the terms of negotiated agreements. Ameritech acknowledges that it voluntarily made its March 29th filing in Ill. C.C. No. 16 in order to implement the first phase of the new rates negotiated under the Agreement. It contends, however, that there is no reason to require the stepped rate decreases extending for the next several years to be tariffed now when they might change in the interim.

Ameritech contends that the Agreement does not discriminate against a telecommunications carrier nor a party to it. Ameritech points out that cellular carriers and CMRS providers have historically been treated differently than landline providers. It argues that it is not appropriate to investigate the policy reasons for the historical differences in a state proceeding involving a voluntary negotiated agreement.

Ameritech notes that the definition of a local exchange carrier in Section 3(44) of the Act excludes a person "insofar as such person is engaged in the provision of a commercial mobile service under Section 332(c), except to the extent that the Commission [FCC] finds that such service should be included in the definition of such term." Ameritech further notes that the FCC opened an investigation earlier this year in the Matter of Commission's Rules to Permit Flexible Service Offerings in the Commercial

Mobile Radio Services, WT Docket No. 96-6, Notice of Proposed Rulemaking (rel. January 25, 1996). According to Ameritech, the FCC is proposing that broad band CMRS providers (which include cellular and PCS providers) be explicitly authorized to provide fixed wireless local loop service. The FCC also sought comments on how the fixed services provided by the broad band CMRS providers should be regulated. Ameritech contends that given the historical differences and the current proceedings, this Commission should not, as a matter of law, determine in this proceeding that the terms of the Agreement must be made available to carriers other than CMRS providers (Ameritech Reply Comments, pp. 7 & 8).

V. CONCLUSION

The pertinent statutory framework of the Act is as follows: telecommunications carriers may enter into negotiated agreements providing for interconnection; the agreements must be submitted to the Commission for approval; the Commission must approve or reject the agreement (or a portion thereof), with written findings relating to deficiencies. The Commission may only reject a negotiated agreement (or portion thereof) if it finds that: it discriminates against a telecommunications carrier not a party to the agreement or the implementation of the agreement is not consistent with the public interest, convenience and necessity. In sum, the Commission must determine two issues: 1) any discriminatory impacts on non-contracting parties and: 2) whether the proposed manner of implementing the Agreement is against the public interest. We turn now to those issues.

None of the participants have argued that the Agreement, on its face, discriminates against a non-contracting party. Our review of the terms and conditions of the agreement compel a similar conclusion. The parties are less unanimous when the proposed method of implementation is considered. Ameritech's Statement in Support of Request for Approval indicates that Ameritech "will make these arrangements available to any commercial mobile radio service ("CMRS") providers operating in Illinois within Ameritech's service territory on the same terms and conditions." This assertion is apparently in response to the dictates of Section 252(i) of the Act.

Staff, in its Brief, posits that "the Agreement at issue will [not] discriminate against a telecommunications carrier not a party to the agreement provided that Ameritech is ordered to make the same terms and conditions, as set forth in the Agreement, available to any and all other requesting telecommunications carriers" (Staff Brief at 4, emphasis in original). Staff concludes that limiting the availability of the terms and conditions of the Agreement solely to CMRS carriers would be discriminatory.

The Commission rejects Staff's implementation approach. As noted previously, Section 252 requires the examination of two issues, whether the Agreement discriminates against a non-contracting party and whether the implementation of the Agreement is not in the public interest. The discrimination determination should be confined to the terms of the Agreement itself, not the proposed manner of implementation. Here, as noted above, none of the participating parties expressed any concern over the terms and conditions of the Agreement and the Commission concludes that there is no discriminatory impact. We turn now to the proposed manner of implementation.

Staff argues that the Commission should ensure that the terms and conditions of the Agreement are available to any "similarly situated" telecommunications carrier by requiring Ameritech to file tariff sheets in its Exchange Access (I.C.C. No. 21) and CMRS (I.C.C. No. 16) Tariffs. Ameritech opposes this, arguing variously that: the Federal Act contains no mention of tariffs, there is no way Ameritech can tariff rates charged it by Cellular One-Chicago; telecommunications carriers are not substantially similar to CMRS providers and have historically been regulated differently, including a specific reference in the Act which, at least temporarily, excludes CMRS providers from the definition of local exchange carriers. Ameritech concludes by indicating it is willing to place a notice in its CMRS tariff indicating the existence of contracts, the terms and conditions of which are available to other CMRS carriers upon inquiry.

The Commission has reviewed the arguments of the parties and concludes that Ameritech should not be required to tariff the terms and conditions of the Agreement. As conceded by Staff, the Federal Act, which is predicated upon pro-competitive, deregulatory principles, contains no reference to tariffs. In fact, by establishing and encouraging contract negotiations, which allow for the careful tailoring of agreements between parties, the Act seems to signal a reduced role for the tariff process, which is an attempt to create a "one size fits all" contract on a "take it or leave it" basis. In addition, no one was able to suggest exactly what such a tariff would look like or the way in which it would be modified if a party exercised one of the contingency clauses and adopted more favorable terms at a later date. This does not, however, end the inquiry.

The Commission shares Staff's concerns over Ameritech's representation that the terms and conditions of this Agreement will be offered only to other CMRS providers. Ameritech's arguments concerning past distinctions are at odds with its arguments concerning the pro-competitive deregulatory thrust of the Act. One obvious distinction between the old and the new approaches is found in the definitions adopted by the new Act. While Ameritech is

correct that CMRS providers are not LECs as defined in the new Act, they are "telecommunications carriers." Closer to home, the Commission, in addressing reciprocal compensation in Customers First, formally established the goal of arriving at a time when "the same rates . . . apply for termination regardless of the originating carrier" (Customers First at 98). The Agreement under consideration here, by its terms, sets rates strictly for termination. The rates should be available to anyone in the market for this product. The fact that the rates are currently unattractive to takers other than CMRS providers does not change this principle. By effectuating this principle in the manner in which the Agreement is implemented, the Commission assures that implementation is in the public interest. Now to the manner of implementation.

Ameritech Illinois will be ordered to insert in both its Exchange Access and CMRS tariffs, tariff sheets reflecting the fact that it has entered into agreements pursuant to the Federal Telecommunications Act of 1996. The Exchange Access tariff sheets shall be placed in the section on End Office Integration. The sheets shall contain the docket number approving the Agreement, the name of the contracting party and the expiration date of the Agreement, if any. The Agreement itself shall be filed under separate cover within five days of approval by the Commission and maintained in a separate binder by the Office of the Chief Clerk. All subsequently approved agreements shall be filed and maintained in a similar manner. Ameritech shall notify the Office of the Chief Clerk upon the expiration of any agreement and shall update the agreement sheets in each tariff book as agreements are approved or expire. In this manner interested parties will have ready access to the terms and conditions Ameritech is obligated to provide requesting telecommunications carriers under Section 252(i) of the Act.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Ameritech Illinois is a telecommunications carrier as defined in Section 13-202 of the Public Utilities Act which provides telecommunications services as defined in Section 13-202 of the Public Utilities Act;
- (2) Ameritech Illinois and Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One-Chicago have entered into a negotiated Agreement dated March 22, 1996, and addendum dated April 30, 1996, which has been submitted to the Commission for approval under Section 252(e) of the Telecommunications Act of 1996;

- (3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) the Agreement between Ameritech and Cellular One-Chicago does not discriminate against a telecommunications carrier not a party to the Agreement;
- (6) in order to assure that the implementation of the Agreement is in the public interest, Ameritech should implement the Agreement by filing it with the Chief Clerk of the Commission under separate cover within five days of approval by the Commission. The Chief Clerk of the Commission shall place the Agreement in a binder which is intended to be used for the filing of all future negotiated agreements approved by the Commission under Section 252(a) of the Act;
- (7) Ameritech should also place replacement sheets in its Exchange Access and CMRS tariffs consistent with the discussion above; a sample replacement tariff sheet is appended to this Order as Appendix A;
- (8) the tariff filed by Ameritech and designated as TRM 266 should be withdrawn by Ameritech;
- (9) approval of this Agreement does not have any precedential effect to any future negotiated agreements or Commission Orders;
- (10) approval of this Agreement does not substitute for the Commission's long-term policy goals regarding termination of local exchange traffic between carriers.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Agreement dated March 22, 1996, and addendum dated April 30, 1996, between Ameritech Illinois and Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One-Chicago is approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Ameritech shall comply with findings (6), (7) and (8) hereinabove within 5 days of the date of this Order.

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IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 26th day of June, 1996.

(SIGNED) Dan Miller

Chairman

(S E A L)

Ameritech has entered into Agreements with telecommunications carriers pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996. Section 252(i) of the Act provides that Ameritech must make available any interconnection, service, or network element provided under such an agreement to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. Ameritech's Agreements have been filed with the Office of the Chief Clerk as _____ No. _____. The contracts available to takers of the service tariffed in this volume are:

Docket No. _____ Expiration Date _____ Contracting Carrier _____